

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 156 (Sub-No. 27X)

DELAWARE AND HUDSON RAILWAY COMPANY, INC.—DISCONTINUANCE OF TRACKAGE RIGHTS EXEMPTION—IN BROOME COUNTY, N.Y.; ESSEX, UNION, SOMERSET, HUNTERDON, AND WARREN COUNTIES, N.J.; LUZERNE, PERRY, YORK, LANCASTER, NORTHAMPTON, LEHIGH, CARBON, BERKS, MONTGOMERY, NORTHUMBERLAND, DAUPHIN, LEBANON, AND PHILADELPHIA COUNTIES, PA.; HARFORD, BALTIMORE, ANNE ARUNDEL, AND PRINCE GEORGE’S COUNTIES, MD.; THE DISTRICT OF COLUMBIA; AND ARLINGTON COUNTY, VA.

Decided: May 13, 2015

On March 19, 2015, Delaware & Hudson Railway Company, Inc. (D&H) submitted a verified notice of exemption under 49 C.F.R. § 1152.50 to discontinue overhead and local trackage rights on approximately 670 miles of rail line owned and/or operated by Norfolk Southern Railway Company, Reading Blue Mountain and Northern Railroad Company, CSX Transportation, Consolidated Rail Corporation, Wilkes-Barre Connecting Railroad Company, Pocono Northeast Railway, Inc., and National Railroad Passenger Corporation. The lines over which the trackage rights exist are located in New York, New Jersey, Pennsylvania, Maryland, the District of Columbia, and Virginia. Notice of the exemption was served and published in the Federal Register on April 8, 2015 (80 Fed. Reg. 18,937). That notice stated that, provided no formal expression of intent to file an offer of financial assistance to subsidize continued rail service was received, the exemption would become effective on May 8, 2015. By decision served April 17, 2015, the effective date of the exemption was extended to June 15, 2015.

On April 20, 2015, James Riffin (Riffin) filed a petition to revoke the exemption, arguing, *inter alia*, that D&H failed to list all of the United States Postal Service Zip Codes and counties that the lines proposed for discontinuance traverse, and any stations on the lines.¹

On May 8, 2015, D&H filed a reply to Riffin’s petition to revoke. D&H argues that it made a “good faith effort” to identify the relevant Zip Codes for the trackage rights proposed for discontinuance.² D&H further argues that Riffin’s allegations are incorrect with regard to at least one of the counties and six of the Zip Codes claimed to be omitted. D&H admits that it

¹ Riffin Motion/Petition to Reject/Revoke 2.

² D&H Reply to Petitions to Revoke Exemption 4. D&H also argues that, because its trackage rights on these lines are overhead only, D&H cannot serve any stations on the lines, which is why none were listed in the notice. *Id.* at 5 n.3.

inadvertently omitted the remaining 13 Zip Codes that Riffin alleges were omitted.³ D&H claims, however, that these errors do not “affect the efficacy of D&H’s notification to potentially interested parties” because the pre-filing newspaper notice of D&H’s intent to discontinue the trackage rights at issue ran in publications that circulate in the Zip Codes and counties that Riffin alleges were omitted.⁴

D&H, as the party filing the verified notice of exemption, bears the burden of providing the Board with complete and accurate information regarding the trackage rights it proposes to discontinue. Accurate information is key to affording the public adequate notice of the proposed transaction. Because D&H omitted at least 13 Zip Codes and at least one county from its verified notice of exemption, D&H will be required to file a supplement to its March 19, 2015 verified notice of exemption, which must include any information required under 49 C.F.R. § 1152.50 that was omitted from its March 19 filing.

The date on which D&H files this supplemental information will be considered the filing date of its verified notice of exemption. The supplemental information will be published in the Federal Register. At that time, the Board will set new deadlines under 49 C.F.R. § 1152.50 based on the filing date of the supplement, including a new effective date for the transaction. All deadlines currently associated with this proceeding, including those for filing offers of financial assistance, are no longer operative, and this proceeding is placed in abeyance until further order of the Board.

Participating parties need not re-file other pleadings that have been filed in this proceeding, although they may file further pleadings addressing any new matters raised by D&H’s supplemental information. The Board will consider all requests and arguments after D&H’s supplemental information is received.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. D&H is ordered to submit a supplement to its March 19, 2015 verified notice of exemption that includes all omitted information required by 49 C.F.R. § 1152.50.
2. All deadlines in this proceeding, including the effective date of this exemption, are no longer operative, and this proceeding is placed in abeyance until further order of the Board.
3. This decision is effective on the service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

³ See id. at 6 (“the subject overhead trackage rights appear[] to either traverse or abut 13 of the ZIP codes . . .”).

⁴ Id. at 4, 6.